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In The

Supreme Court of the United States

October Term, 1975

No. 75-1099

PEOPLE ex rel. WILLIAM J. SCOTT, Attorney General and MICHAEL J. HOWLETT, Secretary of State of the State of Illinois,

Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, an Illinois Corporation; ILLINOIS CENTRAL INDUSTRIES, INC., a Delaware Corporation; ILLINOIS CENTER CORPORATION, a Texas Corporation; and ILLINOIS CENTER PLAZA VENTURE, a partnership,

Respondents.

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Respondent Illinois Central Railroad (hereafter the "Railroad") initially sued Petitioner Secretary of State in the United States District Court for the Northern District of Illinois seeking a declaratory judgment that it had been dissolved pursuant to an Order of the Interstate Commerce Commission; that it owed no franchise taxes to the State of Illinois; and that the Illinois Secretary of State was not barred by any state statute from accepting its articles of dissolution or, alternatively, that any such statute would be nullified by Section 5 of the Interstate Commerce Act.

Petitioner Secretary of State answered this complaint, and concurrently therewith filed a counterclaim against the Railroad, naming as additional counter-defendants Respondents Illinois Central Industries, Inc., Illinois Center Corporation and Illinois Center Plaza Venture. Although not a party to the original action, Petitioner People ex rel. William J. Scott, Attorney General of Illinois, joined in the counterclaim as a purported counter-plaintiff. The counterclaim alleged that the Railroad had violated certain obligations to the State of Illinois pursuant to its Charter, and that the other named counter-defendants had entered into agreements with the Railroad in derogation of purported rights of the State.

The District Court granted counter-defendants' motions to dismiss the counterclaim on October 29, 1975. Following the District Court's denial of the Attorney General and the Secretary of State's post-order motions, those purported parties appealed to the United States Court of Appeals for the Seventh Circuit.

After briefing and oral argument, the Court of Appeals applied *sua sponte* the Tax Injunction Act, 28 U.S.C. §1341 (1970) to the Railroad's complaint, vacated the dismissal of the counterclaim and remanded the case to the District Court with directions to dismiss both the complaint and the counterclaim on jurisdictional grounds.

ARGUMENT

I. THE COURT PROPERLY ADDRESSED AND DISPOSED OF THE JURISDICTIONAL ISSUE.

A federal court must always examine its own jurisdiction, even when such issue is not raised by the parties, *Mansfield C. & L. M. Ry. Co.* v. *Swan,* 111 U.S. 379, 381-82 (1884):

> "An examination of the record, however, discloses that the Circuit Court had no jurisdiction to try the action; and as, for this reason, we are constrained to reverse the judgment, we have not deemed it within our province to consider any other questions involved in it . . . .
>
> "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound *to ask and answer for itself, even when not otherwise suggested and without respect to the relation of the parties to it.*" [Emphasis added.]

See also, *Louisville & Nashville R.R. Co.* v. *Mottley,* 211 U.S. 149, 152 (1908) ("Neither party has questioned . . . jurisdiction, but it is the duty of this court to see to it that [such] jurisdiction . . . is not exceeded. This duty we have frequently performed of our own motion").

Thus, even though no party raised 28 U.S.C. Section 1341 as a jurisdictional bar, the Court of Appeals was not required to delay its decision until briefs and arguments on that question could be submitted. Because a federal court must always examine jurisdiction and because the court correctly applied Section 1341 in this action (Part II, *infra*), this Court need not decide whether Petitioners should have been allowed to file an additional brief.

II. THE PETITION DOES NOT PRESENT ANY IMPORTANT QUESTION OF FEDERAL LAW.

Manifestly, no unique or important issues are presented by the petition filed herein. (Petition at 2.) No new questions of interpretation of federal law are presented; no issues of national import are raised. At best, Petitioners merely assert that the Seventh Circuit Court of Appeals improperly applied jurisdictional principles set forth in *Great Lakes Dredge & Dock Co.* v. *Huffman,* 319 U.S. 293 (1943). We respectfully submit that such issues do not afford a sufficient basis for a grant of certiorari by this Court.

In holding that the District Court should have dismissed Respondent Illinois Central Railroad's complaint "under the restraint of 28 U.S.C. §1341," 525 F.2d at 182, the Seventh Circuit properly refused to decide any questions pertaining to state tax law. *Great Lakes Dredge & Dock Co.* v. *Huffman,* 319 U.S. 293, 297-98 (1943). Because the es-

sential allegations of the complaint and the relief sought were "intertwined with the ultimate collection or non-collection of the Illinois franchise tax," 525 F.2d at 182, the District Court had no jurisdiction to decide the merits of the instant complaint or counterclaim. *Perez* v. *Ledesma,* 401 U.S. 82, 127-28 (1971) (Brennan, J. concurring in part and dissenting in part).

Since the instant complaint and counterclaim can presumably be heard by a state court—and the District Court's order expressly so provides—Petitioners are able to assert their claims (which are based solely upon state law) in an appropriate forum. Thus, since no party has been or will be denied its day in court, no "exceptional" reasons precluded the application of Section 1341. *Great Lakes Dredge & Dock Co.* v. *Huffman,* 319 U.S. 293, 299 (1943).

Finally, the Seventh Circuit correctly disposed of Petitioners' argument that there was federal jurisdiction over the complaint under Section 5 of the Interstate Commerce Act. (49 U.S.C. §5 (1970)). *Seaboard Air Line Railroad Co.* v. *Daniel,* 333 U.S. 118 (1948) held that state courts have jurisdiction to hear a complaint in instances where a party seeks to obey an order of the Interstate Commerce Commission which conflicts with some state law. *Id.* at 123. Because the Railroad's complaint could be filed in state court, a "plain, speedy and efficient remedy" brought Section 1341 into operation thereby requiring dismissal of the lawsuit.

CONCLUSION

For the foregoing reasons Respondents respectfully pray that the petition for a Writ of Certiorari be denied.

Respectfully submitted,

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